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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,441	07/24/2001	Yoshihiro Yamanishi	04995/022001	4439

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EXAMINER

DESIR, JEAN WICEL

ART UNIT	PAPER NUMBER
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2614

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/912,441

Applicant(s)

YAMANISHI, YOSHIHIRO

Examiner

Jean W. Désir

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Kessler et al (US 6,621,528). *(This is the same rejection mailed on 11/20/03).*

Claim 1:

The claimed "storage section for storing the major channel and plural receivable subchannels broadcast by the broadcasting station according to the major channel" is disclosed, see Fig. 1 item 158, col. 5 TABLE 1, where storage section is disclosed as claimed, minor channels are considered as the subchannels;

the claimed "major channel output section for outputting the major channel stored by said storage section" is disclosed, see Fig. 2, col. 4 line 66 to col. 5 line 7;

the claimed "differentiation section for differentiating between the subchannel in selection and the subchannels stored in the storage section other than the subchannel in selection" is disclosed, see col. 5 lines 38-51;

the claimed "subchannel output section for outputting the subchannel in selection differentiated by said differentiation section and the subchannels other the subchannel in selection" is disclosed, see Fig. 1 item 108, Fig. 2, col. 5 lines 38-51.

Claim 5 is disclosed, see Fig. 2, col. 5 TABLE 1, where subchannels (minor channels) are sorted according to a predetermined condition as claimed.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 3, 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kessler et al (US 6,621,528). (*This is the same rejection mailed on 11/20/03*).

Claim 2:

The claimed "said differentiation section is constructed so that the subchannel in selection and the subchannels other than the subchannel in selection are set to different colors" is not explicitly disclosed by Kessler, as claimed in claim 2. However, Official Notice is taken that setting channels to different colors, different fonts and/or font sizes, is a very well procedure in the art that would facilitate channel selection. An artisan would be motivated to implement this procedure in Kessler's disclosure in order to facilitate channel selection. Therefore, the claimed invention would have been obvious to a person of ordinary skill in the art at the time the invention was made.

Claims 3, 4 are rejected for the same reasons as claim 2.

Response to Amendment

5. The Declaration filed on 2/20/04 under 37 CFR 1.131 has been considered but is ineffective to overcome the reference which has been used in the rejections repeated above.

The Declaration with evidence provided by the Applicant, APPLICATION FOR PATENT/UTILITY MODEL APPLICATION faxed on 4/27/04, establishes conception of the invention prior to the effective date of the reference. However, the evidence submitted is insufficient to establish diligence; the evidence shows a framework of the invention which is the mental part of the inventive act. The Applicant must also show diligence in the completion of the invention for the entire period during which diligence is required. And diligence requires that Applicant must be specific as to dates and facts. (See MPEP § 2138.06). The Affidavit is ineffective to overcome the reference; therefore, the rejections are maintained before the Office.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean W. Désir whose telephone number is (703) 308 9571. The examiner can normally be reached on 5/4/9 - First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on (703) 305 4795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JWD
Apr. 29, 04


MICHAEL N. LEE
PRIMARY EXAMINER